

California Regional Water Quality Control Board
Santa Ana Region

October 3, 2003

ITEM: 14

SUBJECT: Status of Efforts to Require Suspected Dischargers to Investigate
Perchlorate Pollution in the Rialto, Colton and Chino Groundwater
Subbasins

DISCUSSION:

At the August 22, 2003 Board meeting, staff reported that, pursuant to Section 13267 of the California Water Code, the Executive Officer had issued a total of nineteen Investigation Orders to suspected dischargers and property owners regarding the perchlorate pollution in the Rialto, Colton and Chino Groundwater Subbasins.

Identified below is the status of the investigations for those suspected dischargers that have conducted activities or communicated with staff since the last Board meeting:

Mr. Wong Chung Ming, Rialto property owner

Mr. Wong Chung Ming (known as Mr. Wong) is the owner of the 160-acre site that is currently leased and occupied by American Promotional Events, Inc. – West (APE – West), and Pyro Spectaculars by Souza. The Executive Officer issued an Investigation Order to Mr. Wong on June 12, 2003. Mr. Wong resides in Hong Kong, and is represented by his local agent and business partner, Mr. Denis Kwan of Monterey Park, California.

Upon receipt of the Investigation Order, Mr. Kwan initially indicated to Board staff that he would comply with the Order by hiring a consultant to prepare and submit a work plan for a soil and groundwater investigation at the 160-acre property. The specified due date for the work plan was August 13, 2003. Board staff contacted Mr. Kwan on August 4, 2003 to determine the status of Mr. Wong's efforts to comply with the Investigation Order. Mr. Kwan informed staff that Mr. Wong was not willing to comply with the Order, and he requested a time extension of the deadline for submittal of a work plan. The Executive Officer denied the extension and issued a Notice of Violation to Mr. Wong on September 18, 2003.

Mr. Thomas O. Peters, Rialto Property Owner

Mr. Thomas O. Peters is the owner of the property at located at 2298 Stonehurst Avenue, Rialto, that is currently leased and occupied by Astro Pyrotechnics. This parcel was formerly occupied by a flare and ordnance manufacturing facility that was owned by Whittaker Corporation. (The Whittaker Corporation is also discussed below.) Pursuant to a 13267 Investigation Order, a work plan for a soil and groundwater investigation at Mr. Peters' Rialto property was due on July 18, 2003. On August 13, 2003, an attorney for Mr. Peters notified Board staff that Mr. Peters would like an extension of the work plan submittal deadline, and that he was seeking additional legal counsel to submit a response to the Executive Officer regarding the Order. On September 9, 2003, the new attorney for Mr. Peters submitted a written request for an extension of the deadline. The Executive Officer will deny the request, and will consider further enforcement based on the adequacy of Mr. Peters' work plan submittal.

Former Occupants of the Storage Bunkers and Adjacent Rialto Property

In June 2003, the Executive Officer issued Investigation Orders to six former occupants of the storage bunkers and nearby properties in Rialto. The Orders required that these six parties submit records of their historical activities in Rialto by July 31, 2003. All but one of the parties responded to the Orders. Recent activity includes the following:

- The Marquardt Company did not respond to the Order. The Executive Officer issued a Notice of Violation letter to Marquardt on September 11, 2003.
- The Whittaker Corporation (formerly AMEX and Tasker Industries) submitted a response on July 30, 2003. Based on staff's review of these documents, it appears that further investigation by the Whittaker Corporation will be necessary. The former Whittaker/AMEX/Tasker site was a flare and ordnance manufacturing facility from at least 1969 through 1972. The Executive Officer will issue an additional 13267 Order requiring a work plan to conduct a soil and groundwater investigation in the vicinity of the former Whittaker/AMEX/Tasker facility at 2298 Stonehurst Avenue in Rialto.

County of San Bernardino

In 2002, the County completed preliminary groundwater investigations of their property. On November 15, 2002, an additional work plan was submitted. The Regional Board adopted Cleanup and Abatement Order (CAO) R8-2003-0013 on January 17, 2003, which, in part, required implementation of the work plan after it was approved by the Executive Officer. On January 31, 2003, the Executive Officer approved the work plan.

The County has completed the field investigation required under the CAO, and Board staff has received a preliminary data report. The final report is pending. Additional information on the County's findings will be presented at the Board meeting.

American Promotional Events, Inc. - West (APE - West)

APE - West submitted a work plan for additional soil investigation at their Rialto facility on July 14, 2003. Staff has reviewed the proposal and contacted APE's consultant to discuss the plan. Staff inspected the proposed soil sampling locations on August 12, 2003, and subsequently reviewed historical records of the use of various buildings at the 160-acre Rialto property. Based on staff's observations at the site and review of the available information, the Executive Officer will approve the work plan with some minor revisions.

Pyro Spectaculars by Souza and Astro Pyrotechnics

On March 3, 2003, the Executive Officer conditionally approved two work plans for Pyro Spectaculars and Astro Pyrotechnics that had been submitted on December 9, 2002. An additional sampling proposal for Pyro Spectaculars, a waste containment plan for Astro Pyrotechnics, and a time schedule for the investigation at each site were to be submitted to the Executive Officer by March 19, 2003.

The attorney for Pyro Spectaculars submitted a revised time schedule for completion of these tasks. The proposed schedule was not satisfactory, so Board staff contacted Pyro Spectaculars to modify this schedule. However, once the field investigation start-date was established, the attorney for Pyro Spectaculars and Astro Pyrotechnics submitted a request for a 45-60 day extension of the deadline. Astro Pyrotechnics has submitted a certified report of waste containment for the site's perchlorate waste stream. Staff visited the site perimeter on August 12, 2003, and verified that the containment was in place.

Pyro Spectaculars and Astro Pyrotechnics are currently in violation of the Investigation Order. The Executive Officer is considering further enforcement for failure to commence the soil and groundwater investigation activities.

Zambelli Fireworks

Pursuant to a 13267 Investigation Order, a work plan for a soil and groundwater investigation at the site of the Rialto storage bunker formerly used by Zambelli was due on January 31, 2003. The work plan that was submitted by Zambelli was delinquent and inadequate, and did not comply with the requirements of the December 16, 2002 Investigation Order. Therefore, the Executive Officer issued an administrative civil liability complaint against Zambelli on July 28, 2003 for failing to comply with the Investigation Order. Zambelli waived its right to a hearing before the Board, and agreed to pay \$20,000 (in four separate installments) to settle its financial obligations under the Complaint, and will submit a work plan by October 6, 2003. Zambelli's initial installment of \$5,000 was paid on time. The second installment is due on October 10, 2003.

Emhart Industries, Inc./Black & Decker (former West Coast Loading Corporation/Kwikset)

On April 11, 2003, Kwikset Corporation filed a Petition for Writ of Mandate in the State Superior Court, Riverside County, seeking an order requiring the Regional Board to issue a written order finding Kwikset not to be the legal successor of WCLC and that WCLC did not discharge perchlorate. The Attorney General's office is representing the Regional Board in this matter. Board staff has prepared the administrative record. This record and the Regional Board's written response were filed with the court on June 23, 2003. The State Attorney General's Office, on behalf of the Regional Board, filed a demurrer with the court in Riverside on July 14, 2003. A hearing in the matter of the demurrer was held before Judge Tranbarger on September 18, 2003. Judge Tranbarger overruled the demurrer, and scheduled a hearing on the Kwikset petition for January 6, 2004.

Pursuant to a 13267 Investigation Order, a work plan for a perchlorate investigation at the former West Coast Loading Corporation (WCLC) facility was due from Emhart Industries, Inc. on November 22, 2002. Emhart/Black & Decker submitted a Petition for Stay and for State Board Review of the 13267 Order. The State Board dismissed the Stay request on December 18, 2002. The State Board dismissed the Petition for State Board Review on July 7, 2003.

On August 6, 2003, Emhart Industries Inc. filed a Writ of Mandate in the State Superior Court, Riverside County, seeking an order to invalidate the Executive Officer's 13267 Investigation Order. This matter is also pending before Judge Tranbarger.

On August 21, 2003, the Executive Officer issued an administrative civil liability complaint against Emhart/Black & Decker for failing to comply with the Investigation Order by submitting the required work plan. A hearing before the Board regarding the administrative civil liability complaint had previously been scheduled to take place on October 3, 2003, but has been postponed. The ACL complaint will be presented to the Board at an upcoming hearing. The ACL hearing was postponed to allow Emhart to file a motion with the court to delay the ACL hearing until such time as the merits of its petition regarding the 13267 Order have been resolved. Staff will oppose any such motion, and will ask the court to permit the ACL hearing to go forward. The court hearing on Emhart's stay request is scheduled to take place before Judge Tranbarger on October 17, 2003.

At the October 3, 2003 Board meeting, staff will provide information on any further developments, and will continue to update the Board at future meetings on the progress of the perchlorate investigation efforts.